

Iron County and its workers compensation insurance carrier, Workers Compensation Fund (jointly referred to as “Iron County”) ask the Utah Labor Commission to review Administrative Law Judge Hann's refusal to remove Dr. Scott Smith from the panel Judge Hann has appointed to consider the medical aspects of Lura J. Alger’s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

Ms. Alger filed an Application For Hearing to compel Iron County to pay workers’ compensation benefits for injuries allegedly related to Ms. Alger’s employment by Iron County. Ms. Alger and Iron County stipulated that, pursuant to authority granted by §34A-2-601 of the Act, Judge Hann should appoint a panel to evaluate the medical aspects of Ms. Alger’s claim. Judge Hann agreed, and appointed Dr. Smith to chair the panel. Iron County then notified Judge Hann that Dr. Smith is a friend and client of Mr. Urquhart, the attorney representing Iron County in this proceeding. Iron County asked Judge Hann to remove Dr. Smith from the panel and appoint another physician in his place.

Judge Hann denied Iron County’s request, based on the following reasoning:

The only time a medical panel chairman would not be able to serve on a commission panel is if he had previously treated the petitioner, thus creating a conflict between his duty to act as an impartial medical evaluator and his prior role as treating physician. There is no evidence Dr. Smith treated the petitioner, thus there is no conflict of interest.

Iron County now seeks interlocutory Commission review of Judge Hann’s foregoing decision.

DISCUSSION AND CONCLUSION OF LAW

In considering whether to address Iron County’s interlocutory motion for review, the Commission notes that interlocutory review of an ALJ’s preliminary determinations can have the effect of diminishing the ALJ’s ability to organize and manage evidentiary hearings, disrupting the adjudicatory process, and delaying the resolution of claims. Consequently, the Commission engages in interlocutory review only if the advantages from deciding the issues presented will outweigh “the interruption of the hearing process and the other costs of piecemeal review.”¹ Interlocutory motions for review are appropriate only in unusual cases.

In this case, Iron County’s interlocutory motion for review presents the novel question of

whether a physician's personal relationships with participants in a workers' compensation claim disqualify the physician from serving on a medical panel to evaluate the claim. Not only is this a novel question, but it is also central to the fair adjudication of Ms. Alger's claim. On balance, the Commission is satisfied that the benefit of deciding this question is sufficient to warrant its review on an interlocutory basis.

Turning now to the merits of Iron County's motion for review, section 34A-2-601 of the Act authorizes the Commission's ALJs to refer the medical aspects of a disputed workers' compensation or occupational disease claim to a physician (or physicians) specializing in the injury or disease in question. This provision of the Act gives the Commission the benefit of well-informed and impartial evaluations of the technical medical questions that lie at the heart of many workers' compensation and occupational disease cases.

Medical panel reports are frequently persuasive, but they are not necessarily conclusive. The Commission and its ALJs must judge questions of medical fact on the preponderance of all medical evidence, not just the panel's opinion. Nevertheless, medical panel opinions are usually given great weight because they are comprehensive, authoritative, and, not least, impartial.

In this case, Iron County questions whether Dr. Smith can be impartial in light of his social and professional relationship with Mr. Urquhart. As a general proposition, the Commission agrees with Iron County that under some circumstances social, professional or other relationships may impinge on a physician's objectivity and impartiality in evaluating an injury or disease claim for the Commission. If that is the case, the physician should decline appointment or resign from the panel. Likewise, the Commission will not appoint a physician to a panel, or will remove the physician, under such circumstances. But before such steps are taken, it must be established that the conflict is real and significant, rather than speculative and insubstantial.

The Commission recognizes that many, if not most, physicians are involved in various professional, business and other organizations. Over time, they treat many patients, develop many personal friendships and participate in various social relationships. Consequently, it is not unusual for a physician to have some sort of connection to one or more of the participants in a workers' compensation case. This is particularly true in smaller population centers. But at the same time, education, training, experience and professional standards all tend to enable physicians to evaluate medical issues objectively and dispassionately.

In this case, the specific questions that must be answered are: 1) What is the nature of Dr. Smith's relationship with Mr. Urquhart; and 2) Does that relationship significantly conflict with Dr. Smith's duty of objectivity and impartiality. These questions have not yet been answered and are best left to Judge Hann to resolve. The Commission does not require Judge Hann to allow hearings or argument on these points, but recommends that Judge Hann use an informal process to quickly resolve the matter and then notify the parties of her decision regarding Dr. Smith's continued service on the medical panel.

ORDER

The Commission remands this matter to Judge Hann for further proceedings consistent with this decision. It is so ordered.

Dated this 11th day of December, 2003.

R. Lee Ellertson, Commissioner

1. Charles H. Koch, Jr., Administrative Law and Practice (1985), §6.75